Supreme Court
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In The

Supreme Court of the United States

JUANITA M. CRUMP-DONAHUE,

Petitioner,

v.

THE UNITED STATES,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

JUANITA M. CRUMP-DONAHUE, *Pro Se*
1010 South Hughes Street
Little Rock, Arkansas 72204
(501) 664-0865

QUESTIONS PRESENTED FOR REVIEW

1. If one case was filed against individual government employees under FTCA 28 U.S.C. § 2678(a), (D)(1)(2)(A)(B) and a second case was filed against the same employees certified as the United States under 28 U.S.C. § 2678(d)(1-5), does the first case's preservice bar the second case under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680?

2. If a "final judgment" was not based on the principal merits or the correct statutes of a case, under the doctrine of *res judicata*, should that judgment be overturned or dismissed as "moot"?

LIST OF ALL PARTIES

1. The Petitioner is Juanita M. Crump-Donahue, individually, 1010 South Hughes Street, Little Rock, Arkansas 72204, and Juanita M. Crump-Donahue, on behalf of: her mother – Eldora Woodard-Spencer, and her three aunts – Ophelia Woodard-Richardson, Georgia Lee Woodard-Holloway Estate, and Juline Woodard-Worthy.

2. The Respondent is the United States represented by: The Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue N.W., Washington, DC 20530-0001 on behalf of The United States Department of Agriculture former and present Secretaries: Daniel Glickman, Ann Veneman and Mike Johanns; and former and present Inspector Generals: Roger C. Viadero, Joyce Fleishman, and Phyllis Fong.

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE BY COURTS OR COMPLAINT

1. *Juanita M. Crump-Donahue v. United States of America,* Fed. App. Rehearing denied. No. 06-1320 (8th Cir. 2006). Order denying rehearing on "whether Federal Tort Claims Act District Court Case No. 4:05CV01844 WRW is barred, or *res judicata* disqualified by a previously filed and dismissed constitutional case No. 4:05CV00708 WRW. (Eighth Circuit Court Order, dated December 05, 2006.) App. 17.

2. *Juanita M. Crump-Donahue v. United States of America,* Fed. App. No. 06-1320 (8th Cir. 2006) Unpublished. (Order affirming District Court's ruling that "Federal Tort Claims Act Case No. 4:05CV01844 WRW is *preservice* barred by the doctrine of *res judicata*, disqualified by previously filed and dismissed constitutional case No. 4:05CV00708 WRW in *Juanita M. Crump-Donahue v. The United States Department of Agriculture, et al.* (Eighth Circuit Court Order dated October 12, 2005.) App. 1.

3. *Juanita Crump v. United States of America.* (District Court error number 1. – Case Caption) Case Caption for Federal Tort Claims Act Case No. 4:05CV01844 WRW "Notice of Appeal" Granted Appeal *in forma pauperis,* should have read *Juanita M. Crump-Donahue v. United States of America*. App. 5.

(District Court error Number 2 – Case Caption determined in error that both cases were filed against the United States). Order said "Plaintiff appealing from this Order [No.4:05CV01844 WRW], in this case [*Juanita Crump v. United States of America*], and from a previous Order

entered in *Crump v. United States of America.* No. 4:05CV00708 "found to be barred by the doctrine of *res judicata.*" (District Court Order dated January 13, 2006.) App. 5.

4. *Juanita Crump v. United States of America* (District Court error Number 1) Caption for Federal Tort Claims Act Case No. 4:05CV01844 WRW should have read *Juanita M. Crump-Donahue v. United States of America.* (District Court error Number 2) case against the United States No. 4:05CV00708. This FTCA Case No. 4:05CV01844 WRW against the United States barred by another Case No. 4:05CV00708 WRW [constitutional case] against the United States [also] because "Res Judicata bars relitigation of every matter raised and any other matter that should have been raised in a previous cause of action where a final judgment was rendered." (District Court error Number 3) Both cases were not filed against the United States. Case No. 4:05CV00708 WRW was filed against 65 Government employees and associates of the United States Department of Agriculture, based on the United States Constitution. Federal Tort Claims Act Case No. 4:05CV01844 WRW was filed against the United States after all preconditions to suit had been satisfied.

5. *Juanita M. Crump-Donahue v. United States Department of Agriculture, et al.,* constitutional case No. 4:05CV00708 WRW, against individual Government employees and founded upon the U.S. Constitution. App. 6, App. 18 & 19.

(District Court error Number 1.) Caption should have read *Juanita M. Crump-Donahue v. The United States Department of Agriculture*, see final order [App. 6] caption for constitutional case No. 4:05CV00708 WRW dated November 29, 2005. (District Court error Number 2.) The Order

said the case was founded upon the Administrative Procedure Act. (District Court error Number 3.) The District Court said the case was founded upon the Fourteenth Amendment to the U.S. Constitution *only*, instead of the U.S. Constitution. See App. 18 & 19. (District Court error Number 4.) The District Court did not rule on the principal merits of the case found in an Interim Order dated September 20, 2005. App. 15.

(District Court Order dated November 29, 2005.) Therefore, the judgment did not flow from the case or the Statutes.

6. *Juanita Crump-Donahue v. United States of America* (District Court error Number 1.) [Caption should have been: *Juanita M. Crump-Donahue v. The United States Department of Agriculture, et al.*] constitutional case No. 4:05CV00708 WRW, against individual 65 Government employees, founded upon the U.S. Constitution (District Court Interim Order, dated September 20, 2005.) App. 15. Also see final order for constitutional case No. 4:05CV00708 WRW, *Juanita M. Crump-Donahue v. The United States Department of Agriculture*. App. 6.

7. *Juanita M. Crump-Donahue v. USDA Federal, Non-Federal Officials and Employees, et al.,* United States District Court, Eastern District of Arkansas, Western Division, Case No. 4:05CV00708, showing case was filed against individual government employees and not against the United States. (First three pages of Complaint filed October 05, 2005.) App. 18-19.

CONCISE STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

This Petition for Writ of Certiorari is for review of the errors in Opinions of the United States Court of Appeals for the Eighth Circuit Case No. 16-1320, as entered October 12, 2006 and December 7, 2006 that "affirmed or enforcement without opinion" that Petitioner's FTCA Case No. 4:05CV01844 WRW in the United States District Court, Eastern District of Arkansas, Western Division "was barred from proceeding" according to errors in the District Court Opinions dated: September 30, 2005, November 29, 2005, and December 16, 2006, and the first three pages of District Court Complaint filed October 05, 2005 (constitutional case No. 4:05CV00708 WRW), although, the prerequisite for filing an FTCA suit did not ripen, under 28 U.S.C. § 2675(a), until after the constitutional case had been dismissed. An FTCA case does not preclude a constitutional case under 28 U.S.C. § 2678(a), (b)(1), (b)(2)(A)(B). This Writ of Certiorari also requests review of the Eighth Circuit differences of Opinions in Petitioner's Case No. 4:05CV00708 WRW based on the United States Department of Agriculture "Misconduct by the Office of Inspector General," and a similar Eighth Circuit FTCA Case No. 03-1916, for *Yoram Raz v. United States* based on "Misconduct by the FBI." The results of the review of these opinions and documents have copious ramifications concerning the outcome of cases modified by court judges' errors. Because of these errors, many citizens are denied access to the U.S. Justice System, guaranteed under the U.S. Constitution. The result of this review will also clarify the Federal Laws, authorized under Federal Tort Claims Act, 28 U.S.C. §§ 2871-2680, for U.S. citizens seeking redress for "Government employee misconduct" from either individual Government employees and their estates (in constitutional

cases), or from Government employees "certified" as the United States (FTCA cases). The statutory basis for jurisdiction for this Petition for Writ of Certiorari is 28 U.S.C. § 1254(1).

STATUTES INVOLVED IN CASE

Federal Tort Claims Act (FTCA) – 28 U.S.C. §§ 2671-2680:

> "A comprehensive legislative scheme by which the United States has waived its sovereign immunity to allow civil suits for actions arising out of negligent acts of agents of the United States. The United States cannot be sued in a tort action unless it is clear that Congress has waived the government's sovereign immunity and authorized suit under the FTCA."

FTCA 28 U.S.C. § 2674 – Liability of United States:

> "The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages."

FTCA 28 U.S.C. § 2675(a) – Disposition by federal agency as prerequisite; evidence:

> "An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his or her office

> or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section."

FTCA 28 U.S.C. § 2678(b)(1)(2)(A)(B) – Attorney fees; penalty:

> "FTCA case does not preclude the filing of a case against individual Government employees or their estates, founded upon the U.S. Constitution or a Federal Statute."

FTCA – 28 U.S.C. § 2679 – Exclusiveness of Remedy:

> "The FTCA applies one to create liabilities for acts or omissions of an employee of the Government while acting within the scope of his employment."

28 U.S.C. § 1346 – United States as defendant:

28 U.S.C. § 1346(a):

"The district court shall have original jurisdiction, concurrent with the United States Court of Federal Claim."

28 U.S.C. § 1346(b):

" . . . district courts shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages . . . for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within

the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place the act or omission occurred."

28 U.S.C. § 2676 – Judgment at Bar:

"The judgment in an action under § 1346(b) *of this title* [FTCA Case against the United States] shall constitute a complete bar to any action [a second FTCA Case against the United States] by the claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim."

28 U.S.C. § 2680(h) – Other Exceptions:

"Section 2680(h) bars suits under the FTCA which allege assault, false imprisonment, and other intentional torts, with the proviso that the United States may be sued for certain intentional torts when the tortfeasor is an investigative or law enforcement officer. 'Investigative or law enforcement officer' is defined to be any officer of the United States 'who is empowered by law to execute searches, to seize evidence, or to make arrest for violations of Federal law.'"

7 U.S.C. § 6912(e):

"The exhaustion of administrative remedies doctrine requires those who claim that an agency's action is unlawful to exhaust any administrative remedies as a precondition to judicial relief."

Title 7, Chapter 55, Subchapter 2270 – United States Department of Agriculture, Office of Inspector General:

"The Inspector General under the Agriculture and Food Act of 1981, Pub. law 97-98, 7 U.S.C.

§ 2270 and pursuant to rules issued by the secretary in 7 C.F.R. Part 1(a) has the authority to:

(1) Make an arrest without a warrant for any such criminal violation if such violation is committed, or if such employee has probable cause to believe that such violation is being committed in the presence of such employee,

(2) execute a warrant for an arrest, for the search of premises, or the seizure of evidence if such warrant is issued under the authority of the United States upon probable cause to believe such violation has been committed.

(3) Carry a firearm; in accordance with rules issued by the Secretary of Agriculture, while such employee is engaged in the performance of official duties under the authority provided in § 6, or discussed in § 9 of the Inspector General Act of 1978 (5 App. U.S.C. 6, 9). The Attorney General of the United States may disapprove any designation made by the Inspector General under this Section."

STATEMENT OF THE CASE

Procedural History

This appeal presents a dispute that first arose in the United States District Court, Eastern District of Arkansas, Western Division (District Court) over errors the District Court made in the final judgment of cases No. 4:05CV00708 WRW and No. 4:05CV01844 WRW.

The District Court erred in ruling that case No. 4:05CV00708 WRW was founded upon the Fourteenth

Amendment to the U.S. Constitution and the Administrative Procedure Act. Order dated November 29, 2005. App. 6.

The District Court erred in not ruling on the Principal Merits of case No. 4:05CV00708 WRW. Order dated November 29, 2005. App. 6. As noted in the September 30, 2005 Interim Order. App. 15.

The District Court erred in ruling that constitutional case No. 4:05CV00708 WRW was filed against the United States instead of against individual Government employees. Order dated January 13, 2006. App. 5.

The District Court erred in determining constitutional case No. 4:05CV00708 WRW and Federal Tort Claims Act case No. 4:05CV01844 WRW were both filed against the United States, thereby barring Federal Tort Claims Act case No. 4:05CV01844 WRW. Order dated December 16, 2005. App. 3.

The District Court erred in determining the plaintiff was proceeding in forma pauperis as a *prisoner* under 28 U.S.C. § 1915(a) in both cases. Order dated January 13, 2006. App. 5.

In writing Orders, the District Court, sometimes possibly inadvertently, and interchangeably captioned Petitioner's name, and the names of the cases incorrectly. See App. Nos. 3-7. Because of these many errors that controlled the results and "Final Judgments" of Petitioner's FTCA Case No. 4:05CV01844 WRW, Petitioner requests a review of the information listed in the Statement of the Case, and Opinions and documents listed in the Appendix.

December 01, 2005, after Petitioner had "exhausted administrative remedies" required under 7 U.S.C.

§ 6912(e), and under the Federal Tort Claims Act, 28 U.S.C. § 2675(a), on December 02, 2005, she filed a Personal Injury Case against the United States, founded upon FTCA, 28 U.S.C. §§ 2671-2680 and 1346(b).

On December 16, 2006, District Court (in error) dismissed Petitioner's Federal Tort Claims Act Case No. 4:05CV01844 as being *preservice[d]* barred by the, November 29, 2005, dismissal of constitutional case No. 4:05CV00708 due to both cases being filed against the United States.

In an "Order" granting Petitioner's request to Appeal the "Judgments" *in forma pauperis* in the Eighth Circuit, the District Court wrote: "Plaintiff first petitioned to proceed *in forma pauperis* in connection with a Complaint [(FTCA Case No. 4:05CV01844)] found to be barred by the doctrine of *res judicata.* Plaintiff then filed a Notice of Appeal, appealing from the Order in this case [(FTCA Case No. 4:05CV01844)] and from the previous Order entered in *Crump v. United States of America* [instead of *Juanita M. Crump-Donahue v. The United States Department of Agriculture, et al.* constitutional case No. 4:05CV00708, founded upon the Constitution of the United States]. Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a)." In an Order dated October 12, 2006, the Eighth Circuit affirmed the District Court's "judgment" that both constitutional case No. 4:05CV00708 WRW and FTCA Case No. 4:05CV01844 WRW were filed against the United States, therefore, the second case, or FTCA case was barred by the Doctrine of *res judicata.*

In 2003, Petitioner filed a constitutional case against individual Government employees and Associates of the

United States Department of Agriculture for violations of the U.S. Constitution and other Federal and State Statutes, in the U.S. Court of Federal claims. In 2004, the Federal Claims Court transferred that case to the District Court of Arkansas.

November 29, 2005, the District Court, *"sua sponte"* dismissed constitutional case No. 4:05CV00708 WRW with prejudice as "frivolous." "A *Bivens'* action is typically a suit for damages against a defendant who, acting in his or her individual capacity under color of federal law, violated the plaintiff's constitutional right." 28 U.S.C. § 2678(a), (b)(1), (b)(2)(A)(B). Also see *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics,* 493 U.S. 388 (1971).

In 2005, after concluding that Petitioner's mental, emotional, and physical health had become morbid as a result of the "outrageous activities," perpetuated against her and her family members by USDA Government employees, Petitioner filed the prerequisite individual "Administrative Claim", or "personal Injury Claims" for herself, her mother, and her three aunts. Between April and June 01, 2005, she presented the United States Department of Agriculture, Office of General Counsel the five claims. 28 U.S.C. § 2401(a) and (b). December 02, 2005 after the six months prerequisite to either receive a denial from the agency or receive no response, Petitioner filed FTCA Personal Injury Case No. 4:05CV01844 WRW in District Court after receiving no response to the administrative or personal injury claims from the federal agency.

In an Order dated December 16, 2005, the District Court dismissed Petitioner's FTCA Case No. 4:05CV01844 WRW as barred by the *res judicata* Doctrine due to the

previously filed and dismissed constitutional case No. 4:05CV00708. See App. Nos. 3-7.

In Orders dated October 12, 2006, and December 7, 2006, the United States Court of Appeals for the Eighth Circuit agreed with the District Court, in spite of the District Court's errors pointed out by Petitioner. The Eighth Circuit denied Petitioner a rehearing by panel or en banc. See App. Nos. 1-2 and 17.

Case History

In response to a "fraud hotline" advertisement, located on the United States Department of Agriculture (USDA), Office of Inspector General (OIG) Website, January 1999, Petitioner filed a "fraud" complaint on behalf of herself, her mother, and her three aunts (sisters). Office of Inspector General employee, Operator 3, contacted Petitioner, for about a month, by phone, the employee and Petitioner constantly discussed the ramifications of the allegations. In response to Operator 3's request, February 8, 1999, Petitioner submitted "power of attorney" documents issued by the four sisters giving Petitioner "representative power."

On February 22, 1999, in a telephone call, Operator 3, informed Petitioner that she [employee] had just come out of a meeting with OIG "higher-ups." She said, they [OIG "higher-ups"] told her to contact Petitioner for authorization to use her and the four elderly sisters' names to initiate investigations in their Farm Service Agencies (FSA). Operator 3 also said, the "higher-ups" had concluded the "fraudulent" situation was "huge," and they [Petitioner and the four sisters] would be paid by OIG. The employee was very excited.

Petitioner said she had to think about the situation, because she did not trust FSA employees, especially the local FSA employees, and their Associates, in her home town. In a faxed letter, dated February 23, 1999, Petitioner informed the OIG employee that she hesitated to authorize the use of her names, because of the potential stressfulness of the situation. She explained that she was a Secondary Education School Teacher, who had retired, because she suffered Agoraphobia (fear of people and open spaces), severe anxiety and depression. After receipt of Petitioner's February 23, 1999 faxed letter, OIG cut off all communication with her without a word or explanation. When Petitioner called or faxed letters asking the employees what had happened, no one would respond.

In a report, dated February 24, 1999, Operator 3 concluded concerning Petitioner's allegations:

> "Note: Complainant provided the attached documents and gave permission to forward the *EXHIBITS* [February 8, 1999, with Power of Attorney Forms] to the appropriate agency, as necessary. Complainant, however, also requests that we do not divulge the identi[t]y of the complainant (or the sisters), as having initiated a request for an OIG investigation. Public Law 95-452, § 7, prohibits the unwarranted disclosure of the complainant's identity or the taking of reprisals against the complainant."

Late April 1999, Petitioner, the four Woodard Sisters and other members of their families began receiving harassing threats of intimidation from a local USDA FSA Associate. The Associate explained that USDA, OIG had informed the local FSA Office, and they had informed him of Petitioner and the sisters' identities, as well as, the

contents of the "fraud" reports they had submitted. The Associate went to Chicago to Petitioner's mother and brother's home and made threats. He, also, made threatening calls to the other elderly and disabled sisters in Springfield, Illinois and Raleigh, North Carolina, and their families. The Associate told Petitioner's husband that because the "situation" involved prominent USDA and Government officials, the situation was "over Petitioner's head." Petitioner tried to contact OIG, they would not respond to letters or phone calls. She contacted USDA Office of Civil Rights (OCR) and informed them of the USDA FSA Associate threats and intimidation. OCR advised Petitioner to contact local law enforcement. Since OIG was a law enforcement agency, themselves, Petitioner was afraid to contact the local law enforcement officials. At the time, she did not understand OIG's motives for exposing her, or the elderly and disabled sisters to harm and danger. The relationship between Petitioner and OIG changed after she informed them of her mental and emotional disabilities in the faxed letter, dated February 23, 1999.

In a letter dated April 22, 1999, OIG had written to FSA stating:

> "ALLEGATIONS: Complainant, Juanita Donahue, 1010 South Hughes Street, Little Rock, Arkansas, telephone number (501) 664-0865, alleges that FSA and others have conspired in a 'farmland takeover scheme' in Lonoke County, Arkansas. Allegedly, FSA has been 'negligent in policing activities from 1989 to 1999.' *Please see the attached for additional information [fraud reports].*
>
> •

NOTE: This matter has been reviewed by the appropriate OIG Investigation or Audit Office. Do not refer this matter to an OIG field office unless your agency develops evidence of criminal activity or information which would indicate a need for further audit review."

From 1999 through 2001, Petitioner continued to write and call OIG requesting answers to why, in spite of her sharing her health problems, they would put her and the elderly Woodard Sisters in danger. OIG employees refused all of Petitioner's requests for explanations, or requests to participate in their "dispute resolution" procedures. Then, in a letter dated February 12, 2001, OIG sent the following information in a letter to their OCR with a copy to Petitioner.

"Subject: Hotline Complaint – George Harrison, County Executive Director (CO-12), Lonoke County, Lonoke, Arkansas, and L.B. and Mary Bryant, Lonoke County, Arkansas – FRAUD

We are forwarding this information for whatever action you believe to be appropriate. No reply to our office is necessary.

NARRATIVE: The USDA Hotline Office received the attached letter and documentation from Juanita M. Crump-Donahue, concerning her Civil Rights complaint. Please respond directly to Ms. Crump-Donahue. Public Law 95-452, § 7 prohibits the unwarranted disclosure of the complainant's identity or the taking of reprisal action against the complainant. In those instances where the complainant is anonymous or wishes to remain confidential, no attempt should be made to discover the identity of the

> complainant. The complaint should be provided or discussed only with those who need to resolve the issues. The typed complaint should not be provided to the subject; however, you may discuss with the subject all relevant issues to completely resolve the complaint."

Upon receipt of the letter, Petitioner tried, again, to contact OIG concerning the letter's meaning. OIG would not respond. When she contacted the OCR Department, the Director said, "OCR did not know what OIG was talking about, and Petitioner should direct all questions to OIG." OIG hasn't responded as of this day.

In the meantime, Petitioner requested additional information from OIG concerning who was using her Social Security Number, as well as, her family members' Social Security Numbers, both dead and alive, to initiate Black Farmers Settlement claims. (*Timothy C. Pigford et al. v. Daniel Glickman, Secretary USDA*, U.S. District Court for the District of Columbia, Civil Action No. 97-1978.) Someone from OIG sent Petitioner 27 claims initiated by the same USDA FSA associate who had been threatening, harassing, and intimidating Petitioner and her family. All of the claims were signed off on or authorized by the Secretary of USDA and other FSA "high" officials. The Claims had been signed off on, or authorized, by the Secretary and others in meetings held in Lonoke County, Jefferson County, and Pulaski County, Arkansas. They had also been signed off on, or authorized by, the USDA Secretary and others in a meeting held in Memphis, Tennessee.

A few months later, 2003, Petitioner informed OIG that she would begin legal procedures in court with the intentions of getting redress for the wrong they had done

to her and her family members. Around that same time, Petitioner noticed that someone was interfering with her computer, printer, and Internet Services. Instead of being able to research information and documentations to be used in her litigation efforts, the search would bring up detestable porno pictures in disgusting display. Or, instead of the searched documents from the Internet, reports would be interjected concerning the Government's destruction of others who had entered into controversy with them. The more Petitioner tried to research laws, regulations, and procedures, the interference became more brazen and blatant. When Petitioner tried to use her Internet search engine, techniques were used to freeze her computer, shut down her computer, prevent printing from her computer, prevent printing from the printer, or print blocks on a sheet where the information should have been. Over the years the Government eventually destroyed four computers and printers and stopped access to multiple Internet Services. The computer, printer, and Internet Services would only become problematic if Petitioner tried to research information that would help her legally. Since Petitioner was trying to get information for her case all the time, the terrorizing became unbearable.

In 2003, Petitioner filed a case in the U.S. Court of Federal Claims against individual employees of the United States Department of Agriculture founded upon the U.S. Constitution. In 2005, the Court of Federal Claims transferred that case to the District Court.

After the computers, printers, and Internet Services interferences, and Petitioner's exhaustive decline in health had made it almost impossible for her to concentrate well enough to file litigation papers, Petitioner filed an Amendment in constitutional case No. 4:05CV00708 for

the first time describing the damage the Government employees were doing to her inside in her home.

In an Interim Order, dated September 30, 2005, issued by the District Court in the constitutional case No. 4:05CV00708, the District Court Judge had ruled.

> "Because Plaintiff is pro-se and not schooled in the rules of civil procedure, her Motion to Supplement her Amended Complaint will be treated as a Second Amended Complaint. Defendant's simple denial of Plaintiff's additional factual allegations is not sufficient to win dismissal.
>
> The allegations of the second amended complaint are accepted as *true*, it can only be dismissed if it appears beyond doubt that the Plaintiff can prove no set of facts in support of a claim that would entitle her to relief. *I am therefore obliged to accept as true that the government disabled the Plaintiff's computer and engaged in other misconduct in violation of Plaintiff's rights."* App. 15.

November 15, 2005, Petitioner informed the District Court and the U.S. Attorney's Office of Arkansas that Government employees had destroyed another computer system, but had left their fingerprint in the computer Internet File as: "List http://pcwhitelist.aol.com/Pcwl/list USA File." November 29, 2005, the District Court *sua sponte* dismissed the constitutional case No. 4:05CV00708 as a pauper's "frivolous" case "that did not explain the harm done." The Case had been filed in District Court as "*Juanita M. Crump-Donahue v. United States Department of Agriculture, et al.*," and was founded upon violation of the U.S. Constitution. See App. 6.

Although the District Court had referred to the alleged principal merits in an Interim Ruling, dated September 30, 2005, in constitutional case No. 4:05CV00708, in its "Final Order," dated November 29, 2005, the findings did not discuss the ruling of September 30, 2005. The Final Order also said the case was filed founded upon the Fourteenth Amendment to the U.S. Constitution, and the Administrative Procedure Act *only*, when the case was founded upon The U.S. Constitution and other Federal and State Laws. See App. 6, 15, 18-19.

Because of the years of suffering under the hands of Government employees in their effort to cover up and prevent Petitioner from seeking justice through their in-house "dispute resolution" processes or through the courts, Petitioner's health again took a decline without any chance of some kind of recovery. Petitioner's doctors had had to double and in some instances triple her psycho-therapy medication since 1999. She suffered from severe mood swings and constant pain. She developed sores in her mouth and on her body. She had to be operated on to remove cysts from her body. Her immune system had weakened, and she easily caught colds or the flu. Her weakened immune system and damaged nervous system developed into Fibromyalgia with Chronic Pain. She developed Neuropathy with intolerable deep-itching in her feet. She could no longer take care of herself. In an effort to exhaust all remedies (7 U.S.C. § 6912(e)), Petitioner sought to resolve the dispute with USDA OIG from 1999-2004. After writing numerous letters to the USDA OIG, the OIG legal staff wrote a letter requesting Petitioner not contact them anymore except in a Court of Law. See 28 U.S.C. § 2401(a) and (b). After filing "Personal Injury Claims" with USDA, and after waiting the required six

months, December 02, 2005, Petitioner filed Personal Injury Complaint, FTCA Case No. 4:05CV01844, against the United States in District Court. "Presentation of an administrative claim to the appropriate agency is a jurisdictional prerequisite to suit." *McNeil v. United States*, 508 U.S. 106, 113 S.Ct. 1980 (1993). (28 U.S.C. § 2675.) Petitioner requested from the Federal Agency $5,000,000.00 for herself and $1,000,000.00 each for the sisters, for a total $9,000,000.00 for the five complainants from USDA.

> "The claim must include a sum certain amount of damages sought and must include sufficient information to allow the agency to investigate the merits of the claim. (28 C.F.R. Part 14.) An action may not be brought for damages greater than the amount of the claim presented to the federal agency. An *exception* is made when the increased amount is based on newly discovered evidence that was not reasonably discoverable at the time the claim was presented or when there are intervening facts relating to the account of the claim."

(28 U.S.C. § 2675.) *Allgeier v. United States,* 909 F.2d 869 (6th Cir. 1990); *Low v. United States*, 795 F.2d 466 (5th Cir. 1986); *O'Rouke v. Eastern Airlines,* 730 F.2d 842 (2d Cir. 1984); *Kielwein v. United States,* 540 F.2d 676 (5th Cir.), *cert. denied*, 429 U.S. 979 (1976). App. 7.

At this time, Petitioner believes the facts of this case justify that the compensatory monetary damages, for the unbearable injuries she and the four sisters continue to endure, substantiates a requested increase to $3,000,000.00 for each of the four sisters, and $13,000,000.00 for herself in compensatory damages. This compensation is to cover all aspects of their personal injury damages in the homes

and in the bodies under Arkansas "Tort of Outrage" or "intentional Infliction of Emotional Distress." See *Yoram Raz v. United States,* Eighth Circuit Opinion in Case No. 03-1916, September 19, 2003 (28 U.S.C. § 2675.)

ARGUMENT

Beginning 2003, Petitioner first filed in the U.S. Court of Federal Claims, and subsequently transferred to the District Court Constitutional case No. 4:05CV00708, founded upon the U.S. Constitution, against 65 Government employees and associates of the United States Department of Agriculture. Actions not precluding a constitutional case after resolution of an FTCA case. 28 U.S.C. § 2678(a), (b)(1), (b)(2)(A)(B).

> " . . . damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.
>
> (b)(2)(A)(B) Paragraph (1) *does not extend or apply* to a civil action against an employee of the Government –
>
> (A) which is brought for a violation of the Constitution, or
>
> (B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized."

Actions barring an FTCA case: 28 U.S.C. § 2676 judgment at bar – a resolved case agianst the U.S. bars a subsequent case against the United States. Neither the preclusion of an FTCA case under 28 U.S.C. § 2678 or the

"judgment at bar" under 28 U.S.C. § 2676 applies to either of Petitioner's cases.

In 2003, Petitioner filed the first constitutional case against individual Government employees "authorized" under FTCA 28 U.S.C. § 2678(a), (b)(1), (b)(2)(A)(B). The District Court erred in the name and caption of that case in some of its Orders. The correct case name is: *Juanita M. Crump-Donahue v. United States Department of Agriculture, et al.* See Final Order, constitutional case No. 4:05CV00708 WRW, App. 6. The District Court erred in not basing its judgment on the principal merits. See App. 6 and 15. The District court also erred in finding that the Case was founded upon the Administrative Procedure Act, and Fourteenth Amendment *only*. The case was not founded upon the Adminstrative Procedure Act. App. 18. The Case was founded upon the United States Constitution, and other Federal and States Laws since the case involved USDA state employees. Therefore, neither the merits, nor the Statutes, cited by the District Court, for judging the constitutional case matched the real case. See App. 6, 15 and 18.

December 02, 2005, Petitioner filed her second case in District Court as: *Juanita M. Crump-Donahue, United States of America,* Federal Tort Claim Act, Personal Injury Claims Case No. 4:05CV01844. FTCA 28 U.S.C. § 2678(d)(1) – Provide for exclusive remedy for "tort" cases against the United States for "Government employees misconduct that occur within the scope of their employment." See App. 7.

Therefore, both cases *were not* against the United States under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, and 1346(b), and *res judicata* did not apply to bar either case.

Petitioner's constitutional case No. 4:05CV00708 WRW should not have been dismissed as frivolous because the District Court did not rule on the principal merits of the case based on the *res judicata doctrine*. . . . "under doctrine of *res judicata*, judgment on merits in prior suit bars second suit involving same parties or their privies based on same cause of action." *Dailey v. Marriott Int'l, Inc.*, 415 F.3d 889, 895-96 (8th Cir. 2005). See App. 2 and 3.

In "affirmation" with the District Court that Petitioner's FTCA Case is *preservice* barred by her previously filed and dismissed constitutional case, the Eighth Circuit based its opinion on cases that barred or had the *res judicata* effect on another case, that did not include FTCA and constitutional cases, or involved issues to Petitioner's case. The Federal Tort Claims Act 28 U.S.C. §§ 2671-80 provides congressional authorization to file both a constitutional case and a case against the United States without one precluding or barring the other. The Eighth Circuit used the following cases to justify using the *res judicata doctrine* to *preservice* bar the filing of FTCA Case No. 4:05CV01844 WRW. In "*Moore v. Sims*, 200 F.3d 1170, 1171 (8th Cir. 2000) (per curiam) (standard of review)," the explanation of the Eighth Circuit was,

> "Section 1915(e)(2)(B) requires dismissal if the court determines a complaint is frivolous or fails to state a claim, and we review such a dismissal as de novo. Relying on *Hamilton v. Shriro,* 74 F.3d 1545, 1547 (8th Cir.), *cert. denied,* 519 U.S. 874 (1996), in which we found that prison officials' decision to deny a Missouri inmate access to a sweat lodge at Potosi Correctional Center did not violate the inmate's right under the First Amendment or under the Religious Act (RFRA)

> to practice his Native American religion. The 'RLUIPA' prohibits prison officials from imposing a substantial burden on the exercise of religion unless they can show that the burden serves a compelling interest and is the least restrictive means of advancing that interest."

Dailey v. Marriott Int'l. Inc., 415 F.3d 889, 895-96 (8th Cir. 2005). "Under doctrine of *res judicata,* judgment on merits in prior suit bars second suit involving same parties or privies based on the same cause of action."

In a case similar to Petitioner's, Yoram Raz, a former Israeli citizen filed his suit under FTCA, 28 U.S.C. §§ 2671-80. *Yoram Raz v. United States*, No. 03-1916, filed September 16, 2003, the Eighth Circuit affirmed in part and reversed in part the district court and remanded the case for further proceedings.

> Yoram Roz appeals the district courts' dismissal of his complaint for failure to state a claim. We affirm in part and reverse in part. Roz, a former Israeli citizen filed his fee-paid Complaint against the U.S. asserting claims under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-80 (FTCA). Roz alleged the FBI continues to engage in what has been a 15 year "campaign of Surveillance, Operations and harassment" against him based on his "expression of certain unpopular political opinions" about the Israeli-Arab Conflict. According to Roz, FBI Agents have placed monitoring stations near his residence; attack him on a regular basis; issue "ALERTS" to local law enforcement agencies so that he is immediately recognized wherever he goes; perform an illegal search of his Louisiana home in October 1998; tapped his telephones and planted electronic tracers in his car; have caused him to

be ostracized by issuing warnings to stores and other businesses he frequents; initiated rumors throughout the community that Roz was a "spy" or "subversive element," which resulted in individuals breaking into his home, hog-tying him, and severely beating him; turned many of his acquaintances into spies working against him; conducted various "sting-operations" that were "extremely insulting and demeaning," whereby the FBI tried to accuse him of various crimes; and detained and interrogated him for about two hours in October 1998 when he walked into an FBI facility to file a complaint relating to the hog-tying incident. Roz further alleged the FBI surveillance activities caused him "stress" and "severe deterioration of health and premature aging," severely limited his "ability to make new acquaintances and destroyed forever relationships between friends," interfered with his ability to re-marry and procreate as the ongoing surveillance scares him away from potential dates; made it nearly impossible to find employment; forced him to relocate several times; and caused him severe bodily injuries.

In October 2001, Roz filed an Administrative Claim with the FBI, which was denied on March 13, 2002. He brought this FTCA action on September 13, 2002. The district court granted the government's motion to dismiss. Having carefully reviewed the record and appellate brief, we conclude the district court should not have dismissed Roz's Fee-Paid Complaint for failure to state a claim. *See Conley v. Gibson*, 355 U.S. 41, 45-46 (1957) (Complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove "no set of acts in support of claim which would entitle him to

relief); *Rucci v. City of Pacific*, 327 F.3d 651 (8th Cir. 2003) (dismissal for failure to state a claim reviewed *de novo*); *Cousineou v. Norstan, Inc.*, 322 F.3d 493, 499 (8th Cir. 2003) (interpretation of state law reviewed *de novo*); *Michaelis v. CBS, Inc.*, 119 F.3d 697, 702 (8th Cir. 1997) (interpretation of federal law reviewed *de novo*).

Initially, we conclude that the portions of Roz's Complaint taking place more than two years prior to his October 2001 administrative claim are not time-barred, because Roz alleged FBI continued to engage in surveillance activities up until and beyond the date he filed his suit. *See* 28 U.S.C. § 2401(b) (tort claims against the United States is forever barred unless it is presented in writing to appropriate federal agency within two years after claim accrues); *Gross v. United States*, 767 F.2d 295, 300 (8th Cir. 1982) (where tortious conduct is continuing in nature, statute of limitations for FTCA Claim runs for date of last tortious act.)

Further, considering all of Roz's allegations, we conclude they are sufficient to state cognizable tort claims under Arkansas law. *See, e.g., Wal-Mart Stores, Inc. v. Lee*, 74 S.W.3d 634, 644-45 (Arkansas 2002) (elements of claim for invasion of privacy by intrusion); *Faulkner v. Ark. Children's Hosp.*, 69 S.W.3d 393, 403-04 (ARK 2002) (elements of claim for intentional infliction of emotional distress). While we agree that Roz may not proceed under the FTCA on a claim of slander, he appears to assert other tort claims that do not fail within the intentional tort exception to the FTCA's waiver of sovereign immunity. *See* 28 U.S.C. § 2680(h) (intentional tort exception to FTCA Waiver); *Gross*, 676 F.2d

at 303-04 (intentional-infliction-of-emotional-distress claims not barred by FTCA's intentional-torts exception); *Nurse v. United States*, 226 F.3d 996, 999, 1002 (9th Cir. 2000) (invasion of Privacy Claim here on alleged illegal searches by federal customs agents fell within FTCA's law-enforcement-officer proviso to intentional tort exception); *Black v. Sheraton Corp. of Am.*, 564 F.2d 531, 539-40 (D.C. Cir. 1977) (Plaintiff stated claim for invasion of privacy by intrusion based on FBI's illegal eavesdropping under FTCA; intrusion claim was not barred by libel or slander exceptions because Plaintiff was not just suing for damage to his reputation, but instead was suing for physical trespass and unlawful invasion of privacy that caused that damage); *Birnbaum v. United States*, 588 F.2d 319, 328 (2d Cir. 1978) (tort of trespass and invasion of privacy do not fall within intentional-tort exception).

We must also conclude that the FBI's alleged surveillance activities fall outside the FTCA's discretionary-function exception because Roz alleged they were conducted in violation of his First and Fourth Amendment rights. *See* 28 U.S.C. § 2680(a) (defining discretionary-function exception to FTCA); *Pooler v. United States*, 787 F.2d 868, 871 (3d Cir.) (noting that discretionary-function exception would not apply if complaint alleged the federal agents violated Plaintiff's constitutional rights in course of investigation, because federal agents do not possess discretion to commit such violations), *cert. denied*, 479 U.S. 849 (1986).

CONCLUSION

This Court should grant certiorari to review the District Court's Orders, Final Judgments, other documentation, and the Eighth Circuit Orders of Affirmation to determine: (1) If Petitioner's constitutional case No. 4:05CV00708 WRW, dismissed with prejudice as "frivolous," should be dismissed as "MOOT" based on the *res judicata doctrine*, because the District Court did not base its findings on the principle "merits" or the correct "statutes" named in the case? (2) If Petitioner's constitutional case No. 4:05CV00708 was not filed against the United States, and therefore, did not bar or *res judicata* the filing of her subsequent Federal Tort Claims Act Case No. 4:05CV01844 WRW? (3) If Petitioner's Federal Tort Claims Act Case No. 4:05CV01844 was correctly filed against the United States under FTCA, 28 U.S.C. §§ 2671-2680, and 1346(b)? (4) If Petitioner's Federal Tort Claims Act Case No. 4:05CV01844 should not be *preservice* barred from proceeding? Petitioner prays this Writ of Certiorari will be Granted.

Respectfully submitted,

JUANITA M. CRUMP-DONAHUE, Pro se,
Petitioner
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United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 06-1320

Juanita M. Crump-Donahue, Appellant,	*	Appeal from the United States District Court for the Eastern District of Arkansas.
v.	*	
United States of America, Appellee.	*	[UNPUBLISHED]

Submitted: October 6, 2006
Filed: October 12, 2006

Before MURPHY, BYE, and MELLOY, Circuit Judges.

PER CURIAM.

Juanita Crump-Donahue appeals the district court's[1] preservice dismissal of her suit under the Federal Tort Claims Act. After de novo review, *see Moore v. Sims*, 200 F.3d 1170, 1171 (8th Cir. 2000) (per curiam) (standard of review), we agree with the district court that Crump-Donahue's suit is barred by res judicata, *see Daley v. Marriott Int'l, Inc.*, 415 F.3d 889, 895-96 (8th Cir. 2005) (under doctrine of res judicata, judgment on merits in

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[1] The Honorable William R. Wilson, Jr., United States District Judge for the Eastern District of Arkansas.

prior suit bars second suit involving same parties or their privies based on same cause of action). We also deny her appellate motions.

Accordingly, we affirm. *See* 8th Cir. R. 47B.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JUANITA CRUMP **PLAINTIFF**

vs **4:05CV01844-WRW**

UNITED STATES OF AMERICA **DEFENDANT**

ORDER

Plaintiff filed two Motions for leave to proceed *in forma pauperis,* a Complaint, An Amended Complaint, and two Motions to Amend her Complaint[1]. The Complaint and Amended Complaint make allegations against the USDA for denying rights to Plaintiff in connection with property located in Lonoke County and owned by the Woodard Sisters. The parties are the same, and the claims of this action arose from the same set of facts involved in a prior action filed by Plaintiff and Dismissed with prejudice on November 29, 2005.[2]

Res Judicata bars relitigation of every matter raised and any other matter that should have been raised in a previous cause of action where a final judgment was rendered.[3] "*Res Judicata* ensures the finality of decisions."[4] A final judgment was entered in the previous action which bars relitigation of any related claims against the same parties.

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[1] Doc. Nos. 1-5.

[2] Case No. 4:05CV00708-WRW, Doc. No. 30

[3] *Chicot County Drainage District v. Baxter State Bank,* 308 U.S. 371 (1940).

[4] *Brown v. Felsen,* 442 U.S. 127 (1979).

This case is, therefore, barred by the doctrine of *Res Judicata*. The Plaintiff's Motions are DENIED and Plaintiff's Complaint and Amended Complaint are DISMISSED with prejudice.

IT IS SO ORDERED this 16th day of December, 2005.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JUANITA CRUMP **PLAINTIFF**

vs. **4:05CV01844-WRW**

UNITED STATES OF AMERICA **DEFENDANT**

ORDER

Pending is Plaintiff's Motion for Leave to Appeal *in forma pauperis*.[1] Plaintiff's first petitioned to proceed *in forma pauperis* in connection with a Complaint that was found to be barred by the doctrine of *res judicata*.[2] Plaintiff then filed a Notice of Appeal, appealing from the Order in this case and from the previous Order entered in *Crump v. United States of America,* 4:05CV00708. Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a).

So, the Motion for Leave to Appeal *in forma pauperis* is GRANTED.

IT IS SO ORDERED this 13th day of January, 2006.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

[1] Doc. No. 9.

[2] Doc. No. 7.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JUANITA M. CRUMP-DONAHUE **PLAINTIFF**

VS. **4:05CV00708 WRW**

UNITED STATES DEPARTMENT OF AGRICULTURE, et al. **DEFENDANTS**

ORDER

Plaintiff filed a Motion to add new parties. The Motion was granted and Plaintiff was ordered to file the proposed Amended Complaint within fourteen (14) days.[1] Plaintiff complied, and filed a Third Amended Complaint, containing additional specific factual allegations and adding sixty-five (65) defendants.

Plaintiff, who is *pro se,* was granted permission to proceed *in forma pauperis.*[2] A provision in the federal *in forma pauperis* statute authorizes district courts to dismiss a pauper's case, *sua sponte,*[3] if the court becomes convinced at any time that the case is frivolous.[4] The *sua sponte* dismissal of frivolous complaints is designed to discourage the waste of judicial resources by parties who are not otherwise constrained by financial considerations.

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[1] Doc. No. 25.

[2] Doc. No. 5.

[3] 28 U.S.C. § 1915(d) (1994), amended by 28 U.S.C. § 1915(e) (Supp. 1997).

[4] *Cooper v. Wood,* 111 F.3d 135 (8th Cir. 1997).

Background

Plaintiff commenced this *pro se* claim in the United States Court of Federal Claims.[5] Plaintiff filed a Complaint, an Amended Complaint, and a Supplemental Complaint, suing the United States Department of Agriculture ("USDA").

Plaintiff alleged that she sought information in 1997 and 1998 from the local Farm Service Agency ("FSA") concerning forty acres of land in Lonoke County over which she had power of attorney, to act on behalf of family members, collectively known as the "Woodard sisters." According to Plaintiff, the FSA refused to provide her with information about the sisters' land, and any government entitlements connected to it.

Because Plaintiff could not get satisfaction from the local FSA, she went to the USDA and filed a complaint with its Office of Civil Rights ("OCR"). The complaint alleged that the Lonoke County FSA, Director George Harrison and County Committee Member, L. B. Bryant conspired to deprive the Woodard sisters of their property rights. The OCR eventually dismissed the complaint.

Plaintiff alleged that the USDA's civil rights department failed to comply with its own procedures,[6] in violation of the Administrative Procedures Act. She also claims that the OCR violated the due process and equal protection

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[5] Doc. No. 1.

[6] Plaintiff stated that the OCR failed to send an "Acknowledgment of Complaint," did not inform Plaintiff that additional information was required, and otherwise completely failed to adhere to the directives of DR 4300-6 (a USDA regulation).

clauses of the Constitution. Plaintiff demanded monetary relief for the above violations.

After consideration, the Federal Claims Court dismissed the case for lack of jurisdiction. However, the Claims Court found that "[f]ederal district courts may have jurisdiction to hear plaintiff's constitutional and civil rights claims, and her allegations of administrative due process violations."[7] The claim was transferred. After transfer, Plaintiff was ordered to file a more definite statement to clarify her theories of liability.[8]

Plaintiff filed an Amended Complaint,[9] alleging that members of the local Farm Agency were guilty of criminal fraud, forgery, and conspiracy to deprive the Woodard sisters of their property rights. Plaintiff asserted that a local FSA committee member, Mr. Bryant, interfered with the sisters' rights when he registered the farm as being operated by him. Plaintiff provided a list of criminal laws violated by Mr. Bryant in collusion with the FSA.

Plaintiff's Third Amended Complaint provides a more detailed description of the facts that underlie the fraud, forgery, and conspiracy allegations. A review of this Complaint reveals that Mr. L. B. Bryant is a family member who allegedly took control of property belonging to his cousins, the Woodard sisters, by forging their names to cash leases. Plaintiff contends that Mr. Bryant was aided and abetted by the local FSA and the USDA. Plaintiff names sixty-five (65) USDA and FSA officials that allegedly

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[7] Doc. No. 1, p. 5.

[8] Doc. No. 8.

[9] Doc. No. 12.

played a part in a conspiracy to deprive Plaintiff of her federal rights and the Woodard sisters of their property rights.

Standard of Review

A finding that a complaint is frivolous, is not the same as finding that it fails to state a claim under Fed. R. Civ. P. 12(b)(6). The Supreme Court held that an unsuccessful claim is not necessarily a frivolous claim: "When a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(b)(6) grounds is appropriate, but dismissal on the basis of frivolousness is not."[10] A complaint is frivolous if it lacks an arguable basis in law or fact.[11]

A court may dismiss a claim as factually frivolous only if the facts alleged are "clearly baseless,"[12] "fanciful,"[13] or "fantastic."[14]

> An *in forma pauperis* complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely. Some improbable allegations might properly be disposed of on summary judgment, but to dismiss them as frivolous without any factual development is to disregard the age-old insight that many allegations

[10] *Neitzke v. Williams*, 490 U.S. 319, 329 (1989).

[11] *Id.* at 325.

[12] *Id.* at 327.

[13] *Id.* at 325.

[14] *Id.* at 328.

> might be 'strange, but true; for truth is always strange, stranger than fiction."[15]

Courts must construe *pro se* complaints liberally, and, unless the initial complaint undoubtedly lacks legal and factual basis, courts are expected to grant leave to allow a plaintiff to allege sufficiently specific and particular facts.[16]

Equal Protection and Due Process

The Equal Protection Clause prohibits government officials from selectively applying the law in a discriminatory way.[17] It protects suspect classifications.[18] "[Y]ou must be singled out because of your membership in the class, and not just be the random victim of governmental incompetence."[19] In fine, Plaintiff must allege an unlawful intent to treat her differently because she is a member of a suspect class.

The Due Process Clause of the Fourteenth Amendment guarantees that no state shall deprive any person of life, liberty, or property, without due process of law.[20] There is nothing in the language of the due process clause that

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[15] *Denton v. Hernandez,* 504 U.S. 25, 33 (1992) (quoting Lord Byron, *Don Juan,* canto XIV, stanza 101 (T. Steffan, E. Steffan & W. Pratt eds. 1977)).

[16] *Haines v. Kerner,* 404 U.S. 519, 520-21 (1972); *Martin v. Sargent,* 780 F.2d 1334, 1337 (8th Cir. 1985).

[17] *Central Airlines, Inc. v. United States,* 138 F.3d 333, 334-35 (8th Cir. 1998) (citation omitted)).

[18] *Baird v Board of Regents of the University of Nebraska,* 79 F.3d 717, 721 (8th Cir. 1996).

[19] *Id.* at 721 (quoting *Albright v. Oliver,* 975 F.2d 343, 348 (7th Cir. 1992)).

[20] U.S. Const. amend. XIV, § 2.

requires the state to protect life, liberty, and property of its citizens against invasion by private actors.[21]

Administrative Procedure Act

Plaintiff alleges that the USDA, by refusing to properly investigate her complaints, violated the Administrative Procedure Act ("APA"). The APA provides that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review."[22] The APA allows for judicial review of final agency action when there is no other adequate remedy in a court.[23] The APA defines agency action to include the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.[24] The Supreme Court stated that as a general matter, two conditions must be satisfied for agency action to be final: (1) the action must mark the end of the agency's decision making process – it must not be a temporary or interlocutory decision; and (2) the action must be one where rights or obligations have been determined, or from which legal consequences will flow.[25]

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[21] *DeShaney by DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 197 (1989);

[22] 5 U.S.C. § 702; *Lincoln v. Vigil*, 508 U.S. 182 (1993).

[23] 5 U.S.C. § 704.

[24] 5 U.S.C. § 551(13).

[25] *Bennett v. Spear*, 520 U.S. 154, 177 (1997).

Discussion

Because Plaintiff is *pro se*, she has been given every opportunity to amend and supplement her pleadings. Plaintiff's final Amended Complaint provided all of the particulars behind this action. Her pleading is 109 pages, and there are 113 exhibits attached. After a thorough review of the pleadings and exhibits, it is clear that this is a family dispute over property rights.

There are no facts alleged that support an action based on constitutional or other federal grounds. Plaintiff's allegation that she was denied equal protection because the FSA and the USDA gave preferential treatment to a family member is without merit. There are no allegations that these state agencies made decisions based on race. Therefore, Plaintiff's equal protection allegations lack an arguable basis in law.

Plaintiff's allegations that state and federal agents conspired with her relative, Mr. Bryant, to deprive the Woodard sisters of their property rights are "fantastic." While fact is sometimes stranger than fiction, it is a stretch of the imagination to accept as true that numerous officials conspired to defraud elderly women of forty acres of land in Lonoke County. While, Mr. Bryant, may have forged the names of his cousins on the leases, the due process clause does not compel the USDA or the FSA to protect Plaintiff from the fraudulent actions of a family member. Plaintiff has sufficient remedies for her grievances without invoking the Constitution.

Plaintiff's allegations that the USDA's civil rights division owed a duty to investigate her allegations is also without merit. The APA does not apply here because the decision by the USDA to close the investigation of

Plaintiff's charges was not an "agency action" as that term is defined by the Supreme Court. The actions of the USDA do not represent a final determination of the rights and obligations of the parties involved in the property dispute; nor do any "legal consequences" flow from the agency's decision. Therefore, the Administrative Procedures Act does not apply.

After reviewing the Plaintiff's pleadings, it cannot be discerned, even under the liberal review that applies to *pro se* litigants, what harm Plaintiff suffered, what acts of defendants caused that harm, and what federal rights were infringed. Therefore, I find that the complaint is frivolous because it leaves no doubt that Plaintiff cannot allege facts sufficient to state a claim. Plaintiff's Complaint is DISMISSED WITH PREJUDICE. All other pending Motions are DENIED AS MOOT.

IT IS SO ORDERED this 29th day of November, 2005.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JUANITA CRUMP DONAHUE **PLAINTIFF**

vs **NO. 4:05CV00708-WRW**

UNITED STATES DEPARTMENT OF AGRICULTURE, et al. **DEFENDANT**

JUDGMENT

(Filed Nov. 29, 2005)

Based on an Order entered this date, this case is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED this 29th day of November, 2005.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JUANITA CRUMP **PLAINTIFF**

vs. **NO. 4:05CV00708WRW**

UNITED STATES OF AMERICA **DEFENDANT**

ORDER

Pending is Plaintiff's Motion to Supplement her Amended Complaint.[1] Included in her Motion, Plaintiff adds additional allegations and asks for "exorbitant" punitive damages. Defendant has responded to the Motion, denying Plaintiff's additional allegations, and requesting that the supplemental allegations be dismissed.[2]

Because Plaintiff is pro-se and not schooled in the rules of civil procedure, her Motion to Supplement her Amended Complaint will be treated as a Second Amended Complaint. Defendant's simple denial of Plaintiff's additional factual allegations is not sufficient to win dismissal. The allegations of the second amended complaint are accepted as true, it can only be dismissed if it appears beyond doubt that the Plaintiff can prove no set of facts in support of a claim that would entitle her to relief.[3] I am therefore obliged to accept as true that the government

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[1] Doc. No. 13.

[2] Doc. No. 18.

[3] *In re Operation of Missouri River System Litigation*, 418 F.3d 915 (2005) (internal quotations omitted).

disabled the Plaintiff's computer and engaged in other misconduct in violation of Plaintiff's rights.

Plaintiff's Motion to Supplement is GRANTED and treated as a Second Amended Complaint. Defendant has already filed an appropriate timely answer.

IT IS SO ORDERED this 30th day of September, 2005.

/s/ Wm. R. Wilson, Jr.
UNITED STATES
DISTRICT JUDGE

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 06-1320

Juanita M. Crump-Donahue,	*	
	*	
Appellant,	*	Appeal from the United
	*	States District Court for
v.	*	the Eastern District of
	*	Arkansas
United States of America,	*	
	*	
Appellee.	*	

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied. Appellant's request for appointment of counsel has been considered by the Court and is denied.

December 7, 2006

Order Entered at the Direction of the Court:

/s/ Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JUANITA M. CRUMP-DONAHUE PLAINTIFF

VS. CASE NO. 4:05CV00708 WRW

USDA Federal, Non-Federal Officials and Employees, and USDA State Connected Individuals through their 1980 Land Grant University of Arkansas and Pine Bluff Community Development Project.
(See Exhibit I –Names of Individuals) DEFENDANT

(Filed Oct. 5, 2005)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JUANITA M. CRUMP-DONAHUE PLAINTIFF

VS. CASE NO. 4:05CV00708 WRW

Claims founded upon violations of the United States Constitution:
The Bill of Rights, 14th Amendment
50 5th Amendment, 4th Amendment,
14th Amendment; Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971); Title 42, Chapter 21, Subch. 1, Sec. 1988,
Vindication of Civil Rights;
Title 42, Chapter 21, Subch. 1, Sec. 1985, Conspiracy to interfere with

Civil Rights, #2 and #3; Title 42,
Chapter 21, subch. 1, sec. 1983,
Deprivation of Rights
Goldberg v. Kelly, 397 U. S. 354 (1970;
Slaughter-House, 83 U.S. at 76;
Title VI of the Civil Rights Act of
1964, Title 42 U.S.C. 2000d et seq;
Arkansas Civil Rights Laws;
Title 42, Chapter 21, subchapter 1,
Sec. 1988, Proceedings in vindication
of civil rights; Title 42, Ch.
21, Subch. 1, Section 1983, Civil
action for deprivation of rights;
Title 42, Ch. 21, Subch. 1, Sec. 1985,
Conspiracy to interfere with civil rights.
Arkansas Constitution, Sections 2, 3,
4, 7, 13, 15, 18, 19, 20, 21, & 29.

USDA Federal, Non-Federal Officials and Employees, and USDA State Connected Individuals through their 1980 Land Grant University of Arkansas and Pine Bluff Community Development Project.
(See Exhibit I –Names of Individuals)
(See attached list of names Exhibit I)

DEFENDANT

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(2)

No. 06-1151

FILED

APR 25 2007

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

JUANITA M. CRUMP-DONAHUE,

Petitioner,

v.

THE UNITED STATES,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR REHEARING

JUANITA M. CRUMP-DONAHUE, *Pro Se*
1010 South Hughes Street
Little Rock, Arkansas 72204
(501) 664-0865

PETITION FOR REHEARING

Pursuant to Rule 44.1, Petitioner respectfully petitions this Court for a Rehearing on the grounds that because the District Court Judge *lied*, and provided *false* facts to the Eighth Circuit on Appeals, these lies caused the Eighth Circuit to use an incorrect "standard of review" to affirm the District Court "*Final Judgment.*"

INTRODUCTION

The dispute before this Court is whether Petitioner's Federal Tort Claims Act (FTCA) Case No. 4:05CV01844 should be allowed to proceed as an original case against the United States, founded upon FTCA 28 U.S.C. § 2671-80, and 1346. December 2005, after filing Personal Injury Claims with USDA and waiting six months for the federal agency to respond, Petitioner filed her first and only FTCA Case No. 4:05CV01844 against the United States in District Court. 28 U.S.C. § 2401(a)(b). The District Court, in a Final Judgment, *erroneously* ruled Petitioner's FTCA Case No. 4:05CV01844 was barred from proceeding, because there was another FTCA case on record, filed by Petitioner, that had been dismissed with prejudice, November 2005. Using the incorrect "standard of review," the Eighth Circuit used the de novo standard – question of law – to affirm the District Court's ruling that Petitioner's FTCA Case No. 4:05CV01844 was barred from proceeding in District Court by the *Res Judicata* Doctrine, or FTCA Judgment Bar, 28 U.S.C. § 2676.

STATEMENT

"Generally, the standard of review on appeal will be *de novo* – for question of law, *clearly erroneous* – for

determination of fact, or *abuse of discretion* for application of the law to the facts.

1. *De Novo*

The appellate court applies the *de novo* standard when reviewing questions of law. *See Cardinal Mooney High Sch Atheletic Ass'n*, 437 Mich 75, 80 (1991) and *People v. Conner*, 209 Mich App 419, 423 (1995). *De Novo* means that the appellate court review the question of law anew, without giving deference to the lower court's ruling. Issues of constitutional law are reviewed *de novo*. *In re Carey*, 241 Mich App 222, 226 (2000).

2. Clearly Erroneous

The appellate court applies the *clearly erroneous* standard of review when reviewing a lower court's findings of fact. A finding is considered "*clearly erroneous*" if, despite the fact that there is evidence to support the finding, the appellate court, after reviewing all the evidence, has a "definite" and firm conviction that a mistake has been committed. *Tuttle v. Dep't of State Hwys*, 397 Mich 44, 46 (1976).

3. Abuse of Discretion

The appellate court applies the *abuse of discretion* standard of review to a lower court's "discretionary" decisions. To show an *abuse of discretion* in making such decisions, "the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but the defiance thereof, not the exercise of reason but rather of passion or bias." *Spaulding v. Spaulding*, 335 Mich 382, 384-385 (1959).

STATEMENT OF THE ISSUE

The issue to be resolved is whether the District Court judge used a *false* "discretionary" decision to *preservice* bar Petitioner from proceeding with litigation of a first or original FTCA Case No. 4:05CV01844 filed against the United States, December 2005? Whether the District Court Judge, based on bias and prejudice, intentionally erred in deciding Petitioner had previously filed a FTCA Case against the United States that was dismissed with prejudice, November 2005? Whether the Eighth Circuit used the wrong standard of review – de novo – to affirm that Petitioner's FTCA Case No. 4:05CV01844 against the United States was barred based on the *res judicata* doctrine? In her Appeal, Petitioner informed the District Court and Eighth Circuit that on December 2005, FTCA Case No. 4:05CV01844 was the *only* FTCA case she had filed in District Court. However, because the Eighth Circuit ruled according to the law of *res judicata*, using *de novo* standard of review, "that if the District Court said Petitioner had filed a first FTCA case against the United States that had been dismissed with prejudice, November 2005, then the second FTCA Case No. 4:05CV01844, filed December 2005, was barred from proceeding." Therefore, the Eighth Circuit erroneously affirmed the District Court Judgment based on erroneous facts designed to "skewed the law."

ARGUMENT

"A Federal Tort Claims Act case is tried without a jury." 28 U.S.C. § 2402. Therefore, the District Court's Judge makes a discretionary "Final Judgment" in an FTCA case against the United States based on FTCA regulations provided in 28 U.S.C. §§ 2671-80, and 1346. An FTCA case against the United States is barred from

proceeding in District Court under FTCA regulations 28 U.S.C. § 2676, "*Judgment at Bar*," and § 2680 "*Exceptions for FTCA Waiver of Sovereign Immunity.*" Petitioner's *only* FTCA Case No. 4:05CV01844 filed against the United States on December 2005, did not meet the criteria to be *barred* by either 28 U.S.C. §§ 2672 or 2680.

Petitioner's Evidence: (1) Under penalty of perjury, Petitioner swears that she did not file a FTCA case against the United States that was dismissed with prejudice in the District Court, November 2005. (2) Under penalty of perjury, Petitioner swears that no FTCA case against the United States was served on the U.S. Attorney of Arkansas, Bud Cummins/Fletcher Jackson, that the District Court dismissed with prejudice, November 2005. (3) Under penalty of perjury, Petitioner swears that there is no FTCA case filed against the United States on record in the District Court that was dismissed with prejudice, November 2005.

In using the *de novo* standard of review, the Eighth Circuit simply "review[ed] the question of law anew:" ruling "If Petitioner had filed two FTCA cases against the United States, then the second cased is barred by the Res Judicata Doctrine or FTCA Judgment at Bar, 28 U.S.C. § 2672." "Only FTCA cases are authorized against the United States." 28 U.S.C. § 1346. However, since there were no facts supporting the District Court's Judge "discretionary" decision that "Petitioner had filed two FTCA cases, whereas the first had been dismissed with prejudice," the Eighth Circuit should have applied the "*clearly erroneous*" and "*abuse of discretion*" standard of review in order to decide an "Appeal" decision based on fact and reason.

If the Eighth Circuit had applied the "*clearly erroneous*" standard to the District Court's finding of fact, it

would have found "evidence that a mistake had been committed." The District Court had no records as proof that Petitioner had filed a FTCA case against the United States that had been dismissed with prejudice, November 2005, prior to her filing FTCA Case No. 4:05CV01844, December 2005. The Arkansas U.S. Attorney has no records showing Petitioner had previously filed a FTCA case against the United States that had been dismissed with prejudice November 2005, prior to her filing FTCA Case No. 4:05CV01844, December 2005.

Since Petitioner's Appeal challenged the District Court Judge's lies concerning the facts that it used to bar Petitioner's FTCA Case No. 4:05CV01844, the appellate court should have also applied the "*abuse of discretion*" standard of review to the District Court Judge's "discretionary" decision. The results of the District Judge's discretionary decision was "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but of perversity of will, not the exercise of judgment, but the defiance thereof, not the exercise of reason, but rather of passion or bias."

CONCLUSION

In light of the above facts, this Court should allow Petitioner to proceed with the litigation of her FTCA Personal Injury Case No. 4:05CV01844 against the United States. Also since the District and Appeals Courts have been outrageously biased and prejudiced against Petitioner in favor of the United States, she requests to be allowed to litigate this case in the U.S. Supreme Court under this dark cloud.

Respectfully submitted,

JUANITA M. CRUMP-DONAHUE
1010 South Hughes Street
Little Rock, AR 72204 Phone: 501-664-0865

CERTIFICATION

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay. This Petition for Rehearing is restricted to the grounds set out in Rule 44.2.

Juanita M. Crump-Donahue,
Pro Se